

Senate Amendment 5252

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1 1 Amend the amendment, S=5131, to Senate File 2361 as
1 2 follows:
1 3 #1. Page 1, by striking lines 10 through 23 and
1 4 inserting the following:
1 5 <#____. By striking page 1, line 23, through page
1 6 3, line 13, and inserting the following:
1 7 <7. a. "Gross revenues" means all consideration
1 8 of any kind or nature including without limitation
1 9 cash, credits, property, and in-kind contributions
1 10 including services or goods derived by a holder of a
1 11 certificate of franchise authority from the operation
1 12 of the holder's network to provide cable service or
1 13 video service within the municipality.
1 14 "Gross revenues" includes all consideration paid to
1 15 a holder of a certificate of franchise authority and
1 16 its affiliates to the extent either is acting as a
1 17 provider of a cable service as authorized by this
1 18 chapter, which shall include but not be limited to all
1 19 of the following:
1 20 (1) All fees charged to subscribers for any and
1 21 all cable service or video service provided by the
1 22 holder of a certificate of franchise authority.
1 23 (2) Any fee imposed on the holder of a certificate
1 24 of franchise authority by this chapter that is passed
1 25 through and paid by subscribers including without
1 26 limitation the franchise fee set forth in this
1 27 chapter.
1 28 (3) Compensation received by the holder of a
1 29 certificate of franchise authority or its affiliates
1 30 that is derived from the operation of the holder of a
1 31 certificate of franchise authority's network to
1 32 provide cable service or video service with respect to
1 33 commissions that are paid to the holder of a
1 34 certificate of franchise authority as compensation for
1 35 promotion or exhibition of any products or services on
1 36 the holder of a certificate of franchise authority's
1 37 network, such as a home shopping or a similar channel,
1 38 subject to paragraph "b", subparagraph (5).
1 39 "Gross revenues" includes a pro rata portion of all
1 40 revenue derived by the holder of a certificate of
1 41 franchise authority or its affiliates pursuant to
1 42 compensation arrangements for advertising derived from
1 43 the operation of the holder of a state-issued
1 44 certificate of franchise authority's network to
1 45 provide cable service within a municipality, subject
1 46 to paragraph "b", subparagraph (3). The pro rata
1 47 portion shall be based on the number of subscribers in
1 48 the municipality divided by the total number of
1 49 subscribers in relation to the relevant regional or
1 50 national compensation arrangement. Advertising
2 1 commissions paid to third parties shall not be netted
2 2 against advertising revenue included in gross
2 3 revenues. Revenue of an affiliate derived from the
2 4 affiliate's provision of cable service or video
2 5 service shall be included in gross revenues to the
2 6 extent the treatment of such revenue as revenue of the
2 7 affiliate and not of the holder of a certificate of
2 8 franchise authority would have the effect, whether
2 9 intentional or unintentional, of evading the payment
2 10 of fees which would otherwise be paid to the
2 11 municipality. In no event shall revenue of an
2 12 affiliate be gross revenue to the holder of a
2 13 certificate of franchise authority if such revenue is
2 14 otherwise subject to franchise fees to be paid to the
2 15 municipality.
2 16 b. "Gross revenues" does not include any of the
2 17 following:
2 18 (1) Any revenue not actually received, even if
2 19 billed, such as bad debt.
2 20 (2) Refunds, rebates, or discounts made to
2 21 subscribers, leased access providers, advertisers, or
2 22 a municipality.
2 23 (3) Any revenues from services classified as
2 24 noncable service or nonvideo service under federal

2 25 law.
2 26 (4) Any revenue paid by subscribers to home
2 27 shopping programmers directly from the sale of
2 28 merchandise through any home shopping channel offered
2 29 as part of the cable services or video services, but
2 30 not excluding any commissions that are paid to the
2 31 holder of a certificate of franchise authority as
2 32 compensation for promotion or exhibition of any
2 33 products or services on the holder of a certificate of
2 34 franchise authority's network, such as a home shopping
2 35 or a similar channel.
2 36 (5) The sale of cable service or video service for
2 37 resale in which the purchaser is required to collect
2 38 fees required under this chapter from the purchaser's
2 39 customer. Nothing under this subparagraph is intended
2 40 to limit the rights of the state or a municipality
2 41 pursuant to 47 U.S.C. } 542(h).
2 42 (6) The provision of cable service or video
2 43 service to customers at no charge, as required or
2 44 allowed by this chapter, including without limitation
2 45 the provision of cable service or video service to
2 46 public institutions, as required or permitted in this
2 47 chapter, including without limitation public schools
2 48 or governmental entities, as required or permitted by
2 49 this chapter.
2 50 (7) Any tax of general applicability imposed upon
3 1 the holder of a certificate of franchise authority or
3 2 upon subscribers by a city, state, federal, or any
3 3 other governmental entity and required to be collected
3 4 by the holder of a certificate of franchise authority
3 5 and remitted to the taxing entity.
3 6 (8) Any foregone revenue from the holder of a
3 7 certificate of franchise authority's provision of free
3 8 or reduced cost cable service to any person including
3 9 employees of the holder of a certificate of franchise
3 10 authority, to the municipality, or to other public
3 11 institutions or other institutions as allowed by this
3 12 chapter; provided, however, that any foregone revenue
3 13 which the holder of a certificate of franchise
3 14 authority chooses not to receive in exchange for
3 15 trades, barter, services, or other items of value
3 16 shall be included in gross revenues.
3 17 (9) Sales of capital assets or sales of surplus
3 18 equipment that is not used by the purchaser to receive
3 19 cable service or video service from the holder of a
3 20 certificate of franchise authority.
3 21 (10) Directory or internet advertising revenue
3 22 including but not limited to yellow pages, white
3 23 pages, banner advertisement, and electronic
3 24 publishing.>
3 25 ~~Page 3, by striking lines 18 through 23.~~>
3 26 ~~Page 4, by striking lines 16 through 23 and~~
3 27 inserting the following:
3 28 <_. Notwithstanding any other provision in this
3 29 chapter, with respect to a franchise, or a certificate
3 30 of franchise authority, a municipality shall have the
3 31 right at any time during which there is more than one
3 32 person providing cable service or video service in the
3 33 jurisdiction of the municipality to increase the
3 34 franchise fee as a percentage of gross revenues which
3 35 persons providing cable service or video service in
3 36 the municipality shall pay up to the maximum permitted
3 37 by law. Any such increase shall be effective upon
3 38 thirty days' notice to each such provider of cable
3 39 service or video service.>
3 40 ~~Page 11, by striking lines 18 through 23 and~~
3 41 inserting the following:
3 42 <_. Not more than once per year, a municipality
3 43 may inspect and audit any books and records of each
3 44 person providing cable service or video service in the
3 45 jurisdiction of the municipality, and recompute any
3 46 franchise fees determined to be payable. The provider
3 47 of cable service or video service shall fully
3 48 cooperate with the municipality in conducting such an
3 49 audit. The cost of the audit shall be borne by the
3 50 municipality, except that if the annual payment to the
4 1 municipality for the preceding year is increased by
4 2 more than five percent as a result of the audit, the
4 3 cost shall be borne by the provider of cable service
4 4 or video service.>>
4 5 ~~By renumbering, relettering, redesignating,~~

4 6 and correcting internal references as necessary.
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4 9 _____
4 10 MIKE CONNOLLY
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4 17 SF 2361.205 81
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